SUPREME COURT U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-511

JAMES TRAINOR, Acting Director, Illinois Department of Public Aid,

Petitioner,

vs.

ELVIRA VARGAS, individually and on behalf of all others similarly situated,

Respondent.

EMERGENCY PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

WILLIAM J. SCOTT,
Attorney General of Illinois,
160 North La Salle Street, Suite 900,
Chicago, Illinois 60601 (793-3500),

Attorney for Petitioner.

ROBERT J. O'ROURKE,
Deputy Attorney General,

PAUL J. BARGIEL,

BONNY SUTKER BAREZKY,
Assistant Attorneys General,

GEORGE L. GRUMLEY,

WILLIAM A. WENZEL,
Special Assistant Attorneys General,
160 North La Salle Street, Suite 800,
Chicago, Illinois 60601,
312-793-5635,

Of Counsel.

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ELVIRA VARGAS, individually and on behalf of all others similarly situated,

Respondent.

EMERGENCY PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The petitioner, Acting Director of the Illinois Department of Public Aid, respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on October 22, 1974.

OPINIONS BELOW

The opinion of the United States District Court, Northern District of Illinois, Eastern Division and the opinion of the United States Court of Appeals for the Seventh Circuit are not reported, and hence appear in the appendix hereto. The order of this Court staying the injunction also appears in the appendix.

JURISDICTION

The order of the United States Court of Appeals for the Seventh Circuit was entered on October 22, 1974. This emergency petition for certiorari was filed within 90 days of the date of the entry of that order. This Court's jurisdiction is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED FOR REVIEW

I. Whether an injunction requiring retroactive payments of state funds for the period of October 1, 1974 to October 22, 1974 is contrary to the Eleventh Amendment?

II. Whether the United States Court of Appeals abused its discretion in granting an injunction which was denied by the United States District Court after a hearing, and which required Petitioners, in part, to make retroactive payments and further to revamp its records and expend State funds without any opportunity for recoupment of those funds should Petitioners succeed in this appeal where the Court of Appeals had no hearing on the merits of the case?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Eleventh Amendment to the United States Constitution.

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State or by Citizens or Subjects of another foreign State."

Chapter 42, U.S.C. § 1983.

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

R.S. § 1979.

Chapter 28, U.S.C. § 1343.

Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights including the right to vote. June 25, 1948, c. 646, 62 Stat. 932; Sept. 3, 1954, c. 1263, § 42, 68 Stat. 1241; Sept. 9, 1957, Pub. L. 85-315, Part III, § 121, 71 Stat. 637.

Chapter 28, U.S.C. § 2201.

Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. June 25, 1948, c. 646, 62 Stat. 964; May 24, 1949, c. 139, § 111, 63 Stat. 105; Aug. 28, 1954, c. 1033, 63 Stat. 890; July 7, 1958, Pub. L. 85-508, § 12(p), 72 Stat. 349.

Chapter 28, U.S.C. § 2202.

Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after

reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment. June 25, 1948, c 646, 62 Stat. 964.

Chapter 28, U.S.C. § 1254.

Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy. June 25, 1948, c. 646, 62 Stat. 928.

Chapter 28, U.S.C. § 1292.

(a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court; . . .

Chapter 28, U.S.C. § 1331.

Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000., exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff. June 25, 1948, c. 646, 62 Stat. 930; July 25, 1958, Pub. L. 85-554, § 1, 72 Stat. 415.

STATEMENT OF THE CASE

In January, 1974, a new Title XVI of the Social Security Act took effect and initiated the SSI (Supplemental Security Income) program which created a uniform federal minimum assistance grant. This grant is 100% federally funded, and is administered by the Social Security Administration of the Department of Health, Education and Welfare. Individual states which, prior to the inception of this program on January 1, 1974, were giving assistance above the proposed SSI amount were required to supplement the basic SSI grant after that date to maintain the prior amount at the least. The mandatory supplement is 100% funded by the State of Illinois.

A state, in administering SSI grants, has a choice of administering the supplement and issuing the checks it-

self, or of allowing the Social Security Administration to administer the supplement. At the inception of the program, the Illinois Department of Public Aid elected to have the Social Security Administration administer the State's portion of the program. However, Illinois reserved the responsibility to investigate and review the needs and living arrangements of these recipients and to supply this information to the Social Security Administration so that it could adjust the State's portion by diminishing or increasing the grants accordingly. The Social Security Administration in administering the program, substantially failed to act on the information provided by the Petitioner. Thus, in September of 1974, the Illinois Department of Public Aid exercised its option of electing to administer its own portion of the program, i.e., the mandatory supplement. From the computation of the changes which took place in the recipients' needs or living arrangements from January 1, 1974 to September, 1974 (the period under the Social Security Administration) it was found that many grants were improper, approximately 3,780 of which were improperly high. It was thus necessary in October of 1974 to reduce or terminate the State's mandatory supplement in those cases, which the Social Security Administration had failed to do. The basic federal grant was not affected.

On September 20, 1974, after its election to self-administer the program, the Department mailed advance notices (see Appendix) to certain recipients of the State Supplemental portion of the program informing these recipients that their October grant would be reduced because of changes in their needs or living arrangements which occurred between January 1, 1974, and September, 1974. The notice also stated that the reduction would not take

place if the recipient could show that the information was incorrect. "You may meet with a representative from your local office to question this action. This meeting would be informal and you may present information or evidence. You may be represented by a person(s) of your choice . . ." It was further stated that whether or not the recipient wished such a meeting, he would "still have the right to appeal the intended action" and the simple procedure for an appeal was given.

On October 2, 1974, Respondents filed an action in the United States District Court for the Northern District of Illinois, Eastern Division, requesting declaratory judgment and injunctive relief pursuant to 42 U.S.C. § 1983, jurisdiction being conferred on that court by 28 U.S.C. § 1343(3) and (4); 28 U.S.C. § 1331; and 28 U.S.C. § 2201 and 2202. The Complaint alleged that the advance notice notice sent out by the Department was constitutionally inadequate. On October 4, 1974, after receiving Respondent's brief and hearing the arguments of counsel, the District Court denied Respondents' motion for temporary restraining order and preliminary injunction. The Court also denied the motion for injunction pending appeal. The Court further determined that the action for declaratory judgment and injunction sought by Respondents "must be denied for the reason that the notice for recipients in issue constitutes adequate notice and opportunity to be heard." (See Appendix).

Having reviewed and corrected all of the records of the recipients involved herein, the Department mailed all the corrected October assistance checks to Respondents in the amounts indicated in the advance notice by October 7, 1974.

On October 8, 1974, the Respondents filed a Motion for Injunction Pending Appeal in the United States Court of Appeals for the Seventh Circuit. On October 22, 1974, the United States Court of Appeals granted the Motion for Injunction Pending Appeal and enjoined Petitioner from "reducing, terminating, or suspending public assistance grants of Plaintiff [Respondent] and the Plaintiff class action based on the form notice of such reduction, termination or suspension pending appeal." The Court further ordered an expedited schedule for briefs and oral arguments. (See Appendix). The reductions to which the injunction refers amount to greater than $100,000 per month of Illinois funds.

On October 26, 1974, Petitioner filed an "Emergency Motion for Stay Pending Determination of Application for Writ of Certiorari" in this Court which was granted on the same date. (See Appendix). This emergency petition for writ of certiorari follows.

REASONS FOR GRANTING THE WRIT

I.

AN INJUNCTION REQUIRING THE RETROACTIVE PAYMENT OF STATE FUNDS FOR THE PERIOD OF OCTOBER 1, 1974 TO OCTOBER 22, 1974, CONTRAVENES THE ELEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The October 22, 1974, order of the Court of Appeals for the Seventh Circuit granting an injunction, requires the Petitioner, in part, to pay funds to Respondents which were deducted from the Respondents' October Supplementary State checks pursuant to Petitioner's records. Respondents' application for a temporary injunction in the Seventh Circuit was made on October 8, 1974, subsequent to the mailing of the Respondents' October checks. The Eleventh Amendment to the United States Constitution, as discussed in *Edelman* v. *Jordan*, —— U.S. ——, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974) prohibits such retroactive payments. This Court in reversing the award of retroactive payments ordered by the Seventh Circuit in *Jordan* stated:

> "It [the retroactive award] requires payment of state funds, not as a necessary consequence of compliance in the future with a substantive federal question determination, but as a form of compensation to those whose [October checks were paid] at a time when petitioners were under no court-imposed obligation to conform to a different standard . . . We reach a similar conclusion [that this suit is barred by the Eleventh Amendment] with respect to the retroactive portion of the relief awarded . . . in this case." 39 L. Ed. 2d at 675-676.

The injunction of October 22, 1974, clearly falls within the prohibited acts cited in *Jordan*. The funds to satisfy the requirements of the injunction in this case for the month of October must inevitably come from the general revenues of the State of Illinois. Such an award resembles far more closely the monetary reward against the State prohibited in *Ford Motor Co.* v. *Department of Treasury*, 323 U.S. 459, 89 L. Ed. 389, 65 S. Ct. 857 (1945) than it does the prospective injunctive relief awarded in *Ex parte Young*, 209 U.S. 123 (1908). As this Court stated in the *Jordan* case, quoting from Judge McGowan's opinion in *Rothstein* v. *Wyman*, 467 F. 2d 226 (CA 2, 1972), cert. denied 411 U.S. 921, 36 L. Ed. 2d 315, 93 S. Ct. 1552 (1973):

> "It is one thing to tell the Commissioner of Social Services that he must comply with the federal standards for the future if the state is to have the benefit of federal funds in the programs he administers. It is quite another thing to order the Commissioner to use state funds to make reparation for the past. The latter would appear to us to fall afoul of the Eleventh Amendment if that basic constitutional provision is to be conceived of as having any present force." Id., at 236-237 (footnotes omitted).

The portion of the injunction requiring the retroactive payment of additional monies based on the October checks of the Respondents clearly contravenes the Eleventh Amendment as interpreted in the Jordan decision, and interprets a federal question in a manner conflicting with decisions of this Court, pursuant to Supreme Court Rule 19 so as to invoke the powers of this Court to grant this petition for certiorari.

II.

THE UNITED STATES COURT OF APPEALS ABUSED ITS DISCRETION IN GRANTING THE INJUNCTION.

As previously indicated, Respondents filed this action in the District Court on October 2, 1974, requesting declaratory judgment and injunctive relief alleging that the advance notice sent out by the Department was constitutionally inadequate. On October 4, 1974, a hearing was held on the merits of this case. Briefs were submitted to the Court by Respondents, Petitioner having but one day's notice. At the close of arguments, the Court denied Respondents' motions for temporary relief. The Court further stated that based on the arguments of counsel, the action for declaratory judgment and injunction "must be denied for the reason that the notice for recipients in issue constitutes adequate notice and opportunity to be heard." The Court was there referring to the argument raised by Respondents that the notice in this case did not comply with the notice requirements of *Goldberg* v. *Kelly*, 397 U.S. 254, 25 L. Ed. 2d 287, 90 S. Ct. 1011 (1970). Petitioners advanced the argument that there were three bases for properly distinguishing this notice from the defective notice in *Goldberg:* (1) The notice indicates the reason for the reduction; (2) the notice gives recipients a simple means of staying the reduction until after an informal meeting with a Department employee to discuss in greater detail the propriety of the proposed reduction and (3) a means to appeal regardless of whether a hearing was had. Based on Respondents' brief and arguments of counsel the trial court found the notice herein to be in compliance with the *Goldberg* requirements.

On October 8, 1974, Respondents filed a Motion for Injunction Pending Appeal in the United States Court of Appeals, Seventh Circuit. The cases are legion which stand for the proposition that the only question on appeal is whether the district court abused its discretion in denying the preliminary injunction. *Gaines Dry Cleaners* v. *City of Chicago,* 123 F. 2d 104, 105 (7th Cir. 1941). In order to determine whether there has been an abuse of discretion, it would be necessary for the Court of Appeals to examine the facts of the case and to make a decision on the merits in the course of a full Appellate hearing. However, based solely on Respondents' Motion, the Court of Appeals granted the requested injunction without the benefit of a full briefing on the merits of the case. When presented with an appeal from a lower court order denying a request for injunctive relief, an Appellate Court may grant an interlocutory stay pending appeal only if the lower court had grossly abused its discretion. *Maas* v. *U.S.*, 371 F. 2d 348 (D.C. 1966), *Kontes Glass Co.* v. *Lab Glass, Inc.*, 373 F. 2d 319 (3rd Cir. 1967). The Court of Appeals improperly entered an injunction pending appeal contrary to the decision of the District Court, without any finding of an abuse of discretion, gross or otherwise, by the District Court and without a full briefing on the merits of the case. Indeed, the Seventh Circuit was silent as to its reason for granting the Motion in Respondents' favor. The only hearing had in this case based on the merits found in favor of the Petitioner. The action of the United States Court of Appeals for the Seventh Circuit in this case has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision pursuant to Supreme Court Rule 19.

Furthermore, the questionable ruling is, in effect, a final judgment as to a portion of the case, and from which there is no opportunity for the injured party, Petitioner, to seek review, except before this Court. By the action of the Court of Appeals, recipients have secured, at least temporarily, higher welfare benefits than Petitioner's records indicate they are entitled to until the final determination of this cause by the United States Court of Appeals. Because Respondents are welfare recipients there is no practicable way these monies can be recovered by the State should the trial court's decision below be affirmed.

In order to comply with the order of the Seventh Circuit, and to avoid charges of contempt, Petitioners would be required to completely change the new system enacted and return its computers to the former incorrect numerical figures. Any monies paid out pursuant to the order of the Seventh Circuit over and above the amounts shown on the Department's records to be legitimate will be irretrievably lost to an already financially overburdened system. This ultimately would have the effect of reducing the amount of funds available for disbursement to all welfare recipients.

Hence, the mandatory interlocutory injunction of the Seventh Circuit does not protect or secure Petitioner's rights pending appeal in that Court or this Court. Conversely, if Respondents should succeed in the Appellate Court after a hearing on the merits, the Department maintains records of each recipient's checks and will return any monies withheld and maintain their assistance at the higher level. The Petitioner clearly faces permanent and irrevocable injury, whereas the Respondents do

not. Any injunction that might lie should not lie at this point in the proceedings but after the Seventh Circuit can arrive at a decision based on the merits of this case. The irreparable monetary damage to the State, which would ensue by compliance with the injunction if Petitioners are successful on the appeal underscores the necessity of this Court's power of supervision. The Seventh Circuit clearly and wrongly abused its power of discretion by granting this injunction.

CONCLUSION

For the reasons stated herein, it is respectfully requested that a writ of certiorari issue to review the order of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago, Illinois 60601 (793-3500),

Attorney for Petitioner.

ROBERT J. O'ROURKE,
Deputy Attorney General,

PAUL J. BARGIEL,

BONNY SUTKER BAREZKY,
Assistant Attorneys General,

GEORGE L. GRUMLEY,

WILLIAM A. WENZEL,
Special Assistant Attorneys General,
160 North La Salle Street, Suite 800,
Chicago, Illinois 60601,
312-793-5635,

Of Counsel.

APPENDIX

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Frank J. McGarr

Cause No. 74 C 2849 Date: October 4, 1974

Title of Cause: Elvira Vargas v. James Trainor

Brief Statement of Motion: Motion for Temporary Restraining Order and Preliminary Injunction.

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel:

James D. Weill—Legal Assistance Foundation
64 East Jackson Boulevard—Chicago, Illinois 60604

Representing:

Plaintiff.

Names and Addresses of other counsel entitled to notice and names of parties they represent:

William J. Scott, Attorney General
160 North LaSalle Street
Chicago, Illinois 60601

Attention: George Grumley

Defendants

Leave given to plaintiff to proceed in forma pauperis. Leave given to plaintiff to proceed as a class action and as representative of class. Motion of defendant to quash is moot. Subpoena withdrawn. Plaintiffs' motion for a temporary restraining order and preliminary injunction is heard and denied. Motion of plaintiff for injunction pending appeal is denied. Court determines that the action for declaratory judgment and injunction sought by plaintiff must be denied for the reason that the notice for recipients in issue constitutes adequate notice and opportunity to be heard.

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604
October 22, 1974

Before

Hon. LUTHER M. SWYGERT, Chief Judge
Hon. THOMAS E. FAIRCHILD, Circuit Judge
Hon. WALTER J. CUMMINGS, Circuit Judge

ELVIRA VARGAS, etc.,

Plaintiff-Appellant,

No. 74-1823

vs.

JAMES TRAINOR,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 74 C 2849

This matter comes before the Court on the appellant's "Motion for Injunction Pending Appeal" and defendant-appellee's motion in opposition to plaintiff-appellant's motion for injunction pending appeal. On consideration whereof,

IT IS HEREBY ORDERED that plaintiff-appellant's motion be GRANTED and that defendant-appellee be enjoined from reducing, terminating, or suspending public assistance grants of plaintiff and the plaintiff class action based on the form notice of such reduction, termination or suspension pending appeal.

IT IS FURTHER ORDERED that appellant's brief be filed on or before November 7, 1974, that appellee's brief be filed on or before November 28, 1974, and that the appellant's reply brief, if any, be filed on or before December 5, 1974.

IT IS HEREBY ORDERED that oral argument will be held on December 11, 1974.

SUPREME COURT OF THE UNITED STATES

No. A-335

JAMES L. TRAINOR, ACTING DIRECTOR,
ILLINOIS DEPARTMENT OF PUBLIC AID,
Applicant

v.

ELVIRA VARGAS, ET AL.

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the injunction entered by the United States Court of Appeals for the Seventh Circuit, case No. 74-1823, entered October 22, 1974, be, and the same is hereby, stayed insofar as it may require petitioner to make payments which would have allegedly fallen due prior to October 22, 1974 pending further consideration of the application when a timely petition for a writ of certiorari is filed and the receipt of a memorandum of respondents.

/s/ William H. Rehnquist
Associate Justice of the
Supreme Court of the United States

Dated this 26th day of October, 1974.

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STATE OF ILLINOIS

Department of Public Aid

NOTICE OF REDUCTION OF ASSISTANCE—
AABD RECIPIENTS

Date of Notice* September 20, 1974

The amount of assistance you receive for October, 1974, will be reduced to the amount shown on the enclosed card. If your assistance is being reduced to "$0" you will still receive your medical card even though you will not get a check.

Your benefits are being reduced because of changes in your needs or living arrangements which occurred between January 1, 1974, and the current month, but which were not entered on your record so as to effect your check. Beginning in October, 1974, when the State will resume control of all supplemental AABD payments, the changes will have been entered and your check will be based upon your updated record. This action is taken pursuant to O.B. 74.46.

This action *will not* be taken if you can show that it is wrong. You may meet with a representative from your local office to question this action. This meeting would be informal and you may present information or evidence. You may be represented by a person(s) of your choice. If you wish such a meeting, contact your case manager. Whether or not you have such a meeting, you will still have the right to appeal the intended action.

YOU HAVE THE RIGHT TO APPEAL THIS DECISION

At any time, *within* 60 days following the "'DATE OF NOTICE'', you have the right to appeal this decision and be given a fair hearing. Such an appeal must be in writing and filed with your county department/district office. You may represent yourself at this hearing or you may be represented by anyone else, such as a lawyer, relative or friend. Your county department/district office will provide you with an appeal form and will help you fill it out if you wish. If you appeal in writing within 10 days of the "'DATE OF NOTICE'', your assistance and/or food stamps will be continued at the present level until a decision is made on your appeal after the hearing.

SUPREME COURT OF THE UNITED STATES

October Term, 1974

JAMES TRAINOR, Acting Director of the State of Illinois Department of Public Aid,

Appellant,

Against

ELVIRA VARGAS, et al.,

Appellees.

A F F I D A V I T

I, JAMES L. TRAINOR, being duly sworn, and on oath, do hereby state:

1. I am the Acting Director of the Illinois Department of Public Aid.

2. The payments for State Supplementation to the AABD Program were mailed to the plaintiff, ELVIRA VARGAS, and to others similarly situated in the reduced amounts indicated on the notices that had been mailed on September 20, 1974. These payments were mailed prior to October 8, 1974.

3. The total of the differences between the September Supplementary Payments and the October Supplementary Payments for the plaintiff ELVIRA VARGAS and all others similarly situated was in excess of $100,000.00, the September total being the higher.

4. That to the best of my knowledge and belief no effective means will exist for recovering funds which the Illinois Department of Public Aid would have to pay pursuant to the injunction granted by the United States Court of Appeals in this matter, were the notice later found to be adequate, the ordered payments therefore having constituted overpayments.

Further affiant sayeth not.

/s/ JAMES L. TRAINOR
JAMES L. TRAINOR

SUBSCRIBED AND SWORN to
before me this 25th day of
October, 1974.

/s/ VERA M. STUHL
NOTARY PUBLIC